

**Maine Revised Statutes**  
**Title 15: COURT PROCEDURE -- CRIMINAL**  
**Chapter 517: ASSET FORFEITURE**

**§5822. PROCEDURE**

**1. Filing of petition.** A petition for forfeiture must be filed as provided in this section.

A. A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of property subject to forfeiture under section 5821, except that to the extent that such a petition seeks the forfeiture of property described in section 5821, subsection 7, the petition shall be filed only with the written approval of the Attorney General. [ 1987 , c. 420 , §2 (NEW) . ]

B. There shall be no discovery other than under the Maine Rules of Civil Procedure, Rule 36, except by order of court upon a showing of substantial need. Any order permitting discovery shall set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place. [ 1987 , c. 420 , §2 (NEW) . ]

C. A petition for forfeiture filed pursuant to this section by the Attorney General or a district attorney shall be accepted by any court having jurisdiction without assessment or payment of civil entry or filing fees otherwise provided for by rules of court. [ 1987 , c. 648 , (NEW) . ]

[ 1987 , c. 648 , (AMD) . ]

**2. Jurisdiction and venue.** Property subject to forfeiture under section 5821 shall be declared forfeited by any court having jurisdiction over the property or having final jurisdiction over any related criminal proceedings or by the Superior Court for Kennebec County. A petition under this section shall be filed in a court having jurisdiction under this subsection.

[ 1987 , c. 420 , §2 (NEW) . ]

**3. Type of action.** The proceeding is an in rem civil action. Property subject to forfeiture may be kept or stored at any location within the territorial boundaries of the State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed. The State has the burden of proving all material facts by a preponderance of the evidence and the owner of the property or other person claiming under the property has the burden of proving by preponderance of the evidence all exceptions set forth in section 5821, except as provided in section 5821, subsection 7, paragraph A.

[ 1991 , c. 461 , §1 (AMD) . ]

**4. Hearings.** At a hearing, other than default proceedings, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. Except as provided in paragraphs A and B, the final order shall provide for the disposition of the property to the General Fund, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice.

A. To the extent that the court finds it appropriate and with the written consent of the Attorney General, the court may order forfeiture of as much of the property as is appropriate to a municipality, county or state agency, or to the district attorneys budget within the Department of the Attorney General, that has made a substantial contribution to the investigation or prosecution of a related criminal case, subject to the requirements of section 5824.

When property is forfeited and transferred to a municipality in accordance with section 5824, the municipal officers of the municipality shall determine the disposition of the property. When property is forfeited and transferred to a county in accordance with section 5824, the county commissioners shall determine the disposition of the property. [1999, c. 408, §1 (AMD).]

B. The court may also order the property sold at public auction and the proceeds of the sale, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice to pay any perfected bona fide mortgage or security interest on the mortgage, disposed of in accordance with other property forfeited under this subsection. [1989, c. 302, §4 (AMD).]

[ 1999, c. 408, §1 (AMD) .]

**5. Default proceedings.** Default proceedings shall be held in the same manner as default proceedings in other civil actions, except that service of motions and affidavits related to default proceedings need not be served upon any person who has not answered or otherwise defended in the action.

[ 1987, c. 420, §2 (NEW) .]

**6. Preliminary process.** Any Justice of the Supreme Judicial Court or the Superior Court, Judge of the District Court or justice of the peace may issue, at the request of the attorney for the State, ex parte, any preliminary order or process as is necessary to seize or secure the property for which forfeiture is or will be sought and to provide for its custody. That order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. Process for seizure of the property may issue only upon a showing of probable cause that the property is subject to forfeiture under section 5821. The application for process and the issuance, execution and return of process is subject to applicable state law. Any property subject to forfeiture under this section may be seized upon process, except that seizure without the process may be made when:

A. The seizure is incident to an arrest with probable cause, a search under a valid search warrant or an inspection under a valid administrative inspection warrant; [1987, c. 420, §2 (NEW).]

B. The property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this section or any other provision of the laws of this State, any other state or the United States; [1987, c. 420, §2 (NEW).]

C. There is probable cause to believe that the property has been directly or indirectly dangerous to health or safety; or [1987, c. 420, §2 (NEW).]

D. There is probable cause to believe that the property has been used or is intended to be used in violation of any criminal law of this State, any other state or the United States. [1987, c. 420, §2 (NEW) .]

[ 1999, c. 2, §19 (AFF); 1999, c. 2, §18 (COR) .]

**7. Rules.** After January 1, 1988, the prosecution of proceedings under this chapter shall be governed by rules adopted or amended by the Attorney General, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. These rules shall provide standards for prosecution, settlement, approval of settlement and equitable transfer of forfeited property.

[ 1987, c. 420, §2 (NEW) .]

#### SECTION HISTORY

1987, c. 420, §2 (NEW). 1987, c. 648, (AMD). 1987, c. 736, §26 (AMD). 1989, c. 302, §4 (AMD). 1991, c. 461, §§1,2 (AMD). RR 1999, c. 2, §19 (AFF). RR 1999, c. 2, §18 (COR). 1999, c. 408, §1 (AMD).

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